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20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**  
22 **SAN FRANCISCO DIVISION**

23 AVRAHAM WAGNER, on behalf of  
24 himself and all others similarly situated

25 Plaintiffs,

26 v.

27 EXPEDIA, INC.;  
28 HOTELS.COM LP;  
TRAVELOCITY.COM LP;  
SABRE HOLDINGS CORPORATION;  
PRICELINE.COM INCORPORATED;  
BOOKING.COM B.V.;  
BOOKING.COM (USA), INC.;  
ORBITZ WORLDWIDE, INC.;  
HILTON WORLDWIDE, INC.;  
STARWOOD HOTELS & RESORTS  
WORLDWIDE, INC.;  
MARRIOTT INTERNATIONAL, INC.;  
TRUMP INTERNATIONAL HOTELS

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Case No. **12**

**5234**

**CLASS ACTION COMPLAINT**  
**JURY TRIAL DEMANDED**

**EDL**

1 MANAGEMENT, LLC;  
2 HILTON WORLDWIDE, INC.;  
3 STARWOOD HOTELS & RESORTS  
4 WORLDWIDE, INC.;  
5 MARRIOTT INTERNATIONAL, INC.;  
6 KIMPTON HOTEL & RESTAURANT  
7 GROUP, LLC; and  
8 INTERCONTINENTAL HOTELS

9 Defendants.

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Plaintiff Avraham Wagner ("Plaintiff"), individually and on behalf of the Class described below, bring this action for damages and injunctive relief pursuant to the Sherman and Clayton Antitrust Acts (15 U.S.C. §§ 1, *et seq.*), California's Cartwright Act (Cal. Bus. & Prof. Code § 16720, *et seq.*), California's Unfair Business Practices Act (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), California's False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*) and the Consumer Legal Remedies Act (Civil Code § 1750, *et seq.*) against Expedia, Inc. ("Expedia"), Hotels.com LP ("Hotels.com"), Travelocity.com LP ("Travelocity"), Sabre Holdings Corporation ("Sabre Holdings"), Booking.com B.V., Booking.com (USA), Inc. (Booking.com B.V. and Booking.com (USA), Inc. will be referred to as "Booking.com"), Priceline.com, Inc. ("Priceline"), and Orbitz Worldwide, Inc. ("Orbitz") (collectively the "Website Retailer Defendants"), and Hilton Worldwide, Inc. ("Hilton"), Starwood Hotels & Resorts Worldwide, Inc. ("Starwood"), Marriott International, Inc. ("Marriott"), Trump International Hotels Management, LLC ("Trump"), Kimpton Hotel & Restaurant Group, LLC ("Kimpton"), InterContinental Hotels Group Resources Inc. ("InterContinental") (collectively the "Hotel Defendants"). Plaintiff complains and alleges upon information and belief based, inter alia, upon investigation conducted by Plaintiffs and their counsel, except as to those allegations pertaining to Plaintiffs personally, which are alleged upon knowledge:

## I. INTRODUCTION

1. Beginning in the 1990's, online retailers began to sell airplane tickets and hotel room reservations to customers through the Internet, claiming that this was an easy and convenient way to make travel arrangements. The Website Retailer Defendants, over the years, grew their business dramatically as they took over the business that was once handled by travel agencies located in brick and mortar buildings. Over the years, these Website Retailers grew in market power as more and more customers switched to purchasing airline tickets and making hotel reservations through the Internet. With this market power, these Website Retailer Defendants and the Hotel Defendants (who operate most of the major hotel chains throughout the world) entered into an antitrust conspiracy to inflate the price of hotel rooms through agreements known as Resale Price Maintenance ("RPM") agreements. The name of these agreements is self

1 explanatory. Instead of actively competing to offer consumers the best possible prices, the  
2 Website Retailer Defendants and the Hotel Defendants conspired to inflate the price of hotel  
3 room reservations and to preserve their dominant position in the industry against competitors that  
4 could offer better prices.

5         2. The Plaintiff in this case purchased hotel room reservations online directly from  
6 one or more of the Website Retailer Defendants in the United States and therefore were injured  
7 by the conspiracy entered into by the Website Retailer Defendants and Hotel Defendants.  
8 Plaintiff brings this antitrust action as a direct purchaser of hotel room reservations in order to  
9 challenge this conspiracy to maintain and/or enforce minimum RPM agreements, to inflate the  
10 price of hotel room reservations and to prevent competitors from entering into the industry.  
11 Through this action, Plaintiff seeks damages and equitable relief from the Defendants in this case  
12 for violations of federal and California antitrust laws.

13         3. The Website Retailer Defendants are among the dominant online travel  
14 companies in California and the United States. Many of these are well-known companies who  
15 claim they are offering the best prices to consumers. These representations, however, are untrue.  
16 In this case, the Website Retailer Defendants, in conjunction with the Hotel Defendants entered  
17 into resale price maintenance agreements to achieve the result of fixing the retail price of room  
18 reservations ("Rack Rates"). The RPM agreements constitute a conspiracy between the Website  
19 Retailer Defendants and Hotel Defendants to fix, maintain and/or inflate Rack Rates and to  
20 suppress and restrain competition and trade within the market for online reservations. The  
21 Website Retailer Defendants and the Hotel Defendants entered into specific agreements to fix  
22 prices (hereinafter referred to as "Retailer-Hotel Agreements.") These Retailer-Hotel  
23 Agreements included express terms to set, maintain, and enforce minimum prices at the Rack  
24 Rates.<sup>1</sup> The Retailer-Hotel Agreements restrained price competition by requiring the Hotel  
25 Defendants to impose, amend, enforce, and/or heighten enforcement of minimum resale price  
26 maintenance agreements. The Hotel Defendants were required to prevent any of online hotel

27 \_\_\_\_\_  
28 <sup>1</sup> The Retailer-Hotel Agreements are comprised of a combination of contracts and  
conspiracies, whether oral or written, express or tacit.

1 retailer to cut their prices or to discount the price of room reservations. Any attempt by any  
2 online retailer to engage in competitive practices that would reduce the retail price of hotel room  
3 reservations was suppressed through the active collusion of the Website Retailer Defendants and  
4 the Hotel Defendants.

5         4. Pursuant to the Retailer-Hotel Agreements, the Hotel Defendants were charged  
6 with enforcing the RPM conspiracy against online retailers that competed or attempted to  
7 compete with the Website Retailer Defendants on price. These Retailer-Hotel Agreements are an  
8 important portion of the anticompetitive conspiracy under which the Website Retailer  
9 Defendants and Hotel Defendants entered into an illegal antitrust agreement to: (a) impose  
10 minimum RPM agreements between and amongst the Website Retailer Defendants and the Hotel  
11 Defendants; (b) enforce these RPM agreements between and amongst the Website Retailer  
12 Defendants and the Hotel Defendants; (c) to refuse to supply or cut off supply of hotel rooms to  
13 any online retailer that seeks to cut prices or otherwise compete with the Website Retailer  
14 Defendants; or (d) ensure that all of the members of the conspiracy charged the same inflated  
15 prices for hotel rooms, which constitutes a harm to Plaintiff and the Class.

16         5. There is a factual basis for the existence of an unlawful and illegal  
17 anticompetitive agreement between and amongst the Website Retailer Defendants and the  
18 Hotel Defendants. Defendant Sabre Holding Corporation, which operates Travelocity.com,  
19 has admitted that the RPM scheme "is a standard industry practice." Nancy St. Pierre, a  
20 spokeswoman for Defendant Sabre Holding Corporation claimed that this was done to  
21 ensure that customers have "confidence that they will get the best rate."<sup>2</sup> The reality,  
22 however, is that these online travel sites have illegally sought to suppress competition in the  
23 market for hotel rooms.

24         6. As a result of the RPM conspiracy, each Retailer-Hotel Agreement with the  
25 major hotel chains, including the Hotel Defendants, provides that Room Reservations will not  
26 be sold to Plaintiff or Class for less than the Rack Rate. The Rack Rate becomes the artificially

27 \_\_\_\_\_  
28 <sup>2</sup> Kann Robinson-Jacobs, "Practice that holds rates steady among Hotel Defendants, travel sites coming under fire," Dallas Morning News (Nov. 16, 2010), reprinted at <http://hsmaidfw.blogspot.com/> (last accessed October 8, 2012).

1 set price by which all customers must pay for any hotel room. The Rack Rate is not the result of  
2 fair competition but is instead the byproduct of an illegal antitrust conspiracy.

3 7. Because all of the Website Retailer Defendants have the same clause in most or  
4 all of their contracts, whether oral or written, **none** of the Website Retailer Defendants compete  
5 with any of the other Website Retailer Defendants on price, and **none** of the Hotel Defendants  
6 compete with the other Hotel Defendants on price, at least in regards to the online hotel room  
7 reservation market. The retail rates for Room Reservations are set at Rack Rates and thus are  
8 virtually identical amongst the Website Retailer Defendants and each of the Hotel Defendants.

9 8. While the Website Retailer Defendants claim that they have "best price  
10 guarantees", this is a misleading statement. Even if a given Website Retailer Defendants is  
11 offering the "best price" available, it is only because all of the Website Retailer Defendants and  
12 Hotel Defendants have conspired to ensure that there is **only one price**. Therefore, there really  
13 is no "best price" but instead there is a fixed price that all consumers pay, a price that is  
14 illegally set pursuant to an antitrust agreement between and amongst the Website Retailer  
15 Defendants and the Hotel Defendants.

16 9. If not for Defendants' anti-competitive, illegal and deceptive business practices,  
17 Plaintiff and the Class would have paid less for each of the room reservations purchased during  
18 the Class Period. This pecuniary injury is the result of an antitrust conspiracy. The direct  
19 consequence of Defendants' unlawful conduct was that Plaintiff and the Class paid overcharges  
20 on their purchases of room reservations throughout the Class Period. Plaintiff thus seeks  
21 monetary damages and equitable relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C.  
22 §§ 15(a) and 26, for violations of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1). On  
23 behalf of a subclass of California residents who also paid overcharges on their purchase of room  
24 reservations during the Class Period, Plaintiff and the subclass bring claims for violation of  
25 California's Cartwright Act (Cal. Bus. & Prof. Code § 16720, *et seq.*), California's Unfair  
26 Business Practices Act (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), California's False  
27 Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*) and the Consumer Legal Remedies  
28 Act (Civil Code § 1750, *et seq.*)



## II. JURISDICTION AND VENUE

10. Plaintiff brings this action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, to recover treble damages, equitable relief, costs of suit and reasonable attorneys' fees for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Subject matter jurisdiction is proper pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15 (a), and 28 U.S.C. §§ 1331 and 1337, because the action arises under the laws of the United States. This Court also has supplemental jurisdiction over Plaintiff's California state law claims pursuant to 28 U.S.C. § 1367.

11. Venue is proper in this District under 15 U.S.C. § 15(a) and 22, and under 28 U.S.C. § 1391, because one or more of the Defendants resides, is licensed to do business, or is found or transacts business in this District, and a substantial part of the events or omissions giving rise to the Plaintiff's claims arose in this District. The effect of this conspiracy has the largest impact on the State of California. The largest number of travelers come from California and California also has the largest tourism industry in the United States. The Northern District of California is the appropriate venue for this case due to the fact that most of the harm impacts California and one of the Defendants is headquartered in the Northern District of California.

12. Defendants are subject to this Court's jurisdiction because of their nationwide contacts and other activities, as well as their contacts and other activities with the State of California. Defendants, through their acts have also directed their activities into the State of California and have caused significant and tremendous harm in the State of California.

### III. PARTIES

**A. Plaintiff, Individually and On Behalf of a Class**

13. Plaintiff **Avraham Wagner** ("**Wagner**" or "**Plaintiff**") is a resident of the State of California. During the Class Period, Plaintiff Wagner purchased room reservations for hotel rooms through at least one of the Website Retailer Defendants. Plaintiff paid an overcharge on that hotel room reservation as a result of the antitrust conspiracy alleged in this complaint. As such, Plaintiff has suffered actual damages by the conduct alleged herein.

1 **B. Defendants**

2 **1. Website Retailer Defendants**

3 14. Defendant **Expedia, Inc. ("Expedia")** is a Delaware corporation with its  
4 principal place of business at 33 108th Avenue NE, Bellevue, Washington 98004. Expedia is  
5 one of the largest online travel company in the world, with an extensive brand portfolio that  
6 includes some of the world's leading online travel brands, including Expedia.com®, the world's  
7 largest full service online travel agency, with localized sites in 30 countries, Hotels.com®, the  
8 hotel specialist with sites in more than 60 countries, Hotwire®, a leading discount travel site that  
9 offers opaque deals in nine countries on its eight sites in North America and Europe, Egencia®,  
10 the world's fifth largest corporate travel management company eLong™, the second largest  
11 online travel company in China Venere.com®, the online hotel reservation specialist in Europe  
12 Expedia Local Expert®, a provider of in-market concierge services, activities and experiences in  
13 18 markets worldwide Classic Vacations®, a top luxury travel specialist.

14 15. Defendant **Hotels.com LP ("Hotels.com")** is an affiliate of Expedia. Hotels.com  
15 LP is a Texas limited partnership with its headquarters located at 10440 North Central  
16 Expressway, Suite 400, Dallas, Texas 75231.

17 16. Defendant **Sabre Holding Corporation ("Sabre")** is a Delaware corporation  
18 with its headquarters at 3150 Sabre Drive, Southlake, Texas 76092. According to their corporate  
19 website, Defendant Sabre is a global technology company with more than one billion users  
20 around the world.

21 17. Defendant **Travelocity.com LP ("Travelocity")** is a Delaware limited  
22 partnership with its principal place of business located at 3150 Sabre Drive, Southlake, Texas  
23 76092. Travelocity is owned by Defendant Sabre.

24 18. Defendant **Priceline.com Incorporated ("Priceline")** is a Delaware corporation  
25 with its principal place of business at 800 Connecticut Avenue, Norwalk, Connecticut 06854.  
26 The Priceline Group provides online travel services in over 180 countries in Europe, North  
27 America, South America, the Asia-Pacific region, the Middle East and Africa. According to its  
28

1 corporate website, Priceline is a leader in global online hotel reservations, with over 235,000  
2 participating hotels worldwide.

3 19. Defendant **Booking.com B.V. ("Booking.com")** is a company based in  
4 Amsterdam, the Netherlands, with its principal place of business at Herengracht 597, 1017 CE,  
5 Amsterdam, Netherlands. Booking.com B.V. owns and operates Booking.com, the leading  
6 worldwide online hotel room reservation retailer by room nights sold, attracting over 30 million  
7 unique visitors each month via the Internet from both leisure and business markets worldwide.  
8 Booking.com B.V. is a wholly owned subsidiary of Priceline.com Incorporated.

9 20. Defendant **Booking.com (USA), Inc. ("Booking.com USA")** is a Delaware  
10 corporation with its principal place of business at 100 William Street, Suite 750, New York, New  
11 York 10038. Booking.com USA is a wholly owned subsidiary of Priceline.com Incorporated.

12 21. Defendant **Orbitz Worldwide, Inc. ("Orbitz")** is a Delaware corporation with  
13 its corporate headquarters located at 500 W. Madison Street, Suite 1000, Chicago, Illinois 60661.  
14 According to its corporate website, Orbitz is a leading global online travel company that uses  
15 innovative technology to enable leisure and business travelers to research, plan and book a broad  
16 range of travel products.

17 **2. Hotel Defendants**

18 22. Defendant **Kimpton Hotel & Restaurant Group, LLC ("Kimpton")** is a  
19 Delaware limited liability company with its principal place of business at 222 Kearny Street,  
20 Suite 200, San Francisco, CA 94108. Kimpton is one of the largest hotel operators in the world.

21 23. Defendant **Intercontinental Hotels Group ("Intercontinental")** is a Delaware  
22 corporation with its principal place of business at 3 Ravinia Drive, Suite 100, Atlanta, Georgia  
23 30346-2149. Intercontinental operates 4,542 hotels in 100 countries and territories under 9  
24 different hotel brands. According to the company's corporate website, Intercontinental is the  
25 leader in 13 of the top 20 markets in the world.

26 24. Defendant **Starwood Hotels & Resorts Worldwide, Inc. ("Starwood")** is a  
27 Maryland corporation with its principal place of business at One StarPoint, Stamford,  
28 Connecticut 06902. One of the world's largest hotel companies, it owns, operates, franchises and

1 manages hotels, resorts, spas, residences, and vacation ownership properties under its nine  
2 owned brands across the world. Starwood's hotels are primarily operated under the following  
3 brand names: St. Regis®, The Luxury Collection®, Sheraton®, Westin®, W®, Le Meridien®,  
4 Four Points® by Sheraton, Aloft® and Element®.

5 25. Defendant **Marriott International, Inc. ("Marriott")** is a Delaware corporation  
6 with its principal place of business at 10400 Fernwood Road, Bethesda, Maryland 20817-1102.  
7 As of the end of 2009, Marriott operated 3,400 lodging properties in 68 countries and territories.  
8 Marriott operates and franchises hotels under the Marriott®, JW Marriott®, The Ritz-Carlton®,  
9 Renaissance®, Residence Inn®, Courtyard®, TownePlace Suites®, Fairfield Inn®, SpringHill  
10 Suites® and Bulgari® brand names.

11 26. Defendant **Trump International Hotels Management, LLC ("Trump")**, doing  
12 business as The Trump Hotel Collection, is a Delaware limited liability company with its  
13 corporate headquarters at 725 Fifth Avenue, New York, New York 10022. Trump is regarded as  
14 one of the leading hotel management companies in the industry.

15 27. Defendant **Hilton Worldwide, Inc. ("Hilton")** is a Delaware corporation doing  
16 business as Hilton Hotels & Resorts with its principal place of business at 7930 Jones Branch  
17 Drive, McLean, Virginia 22102. With 540 hotels and resorts in 78 countries, Hilton prides itself  
18 as one of the leading companies in the hospitality industry.

19 **C. Aiding and Abetting / Conspiracy**

20 28. Defendants, and each of them, are sued as participants and as aiders and abettors  
21 herein alleged. At all relevant times, each Defendant was and is the agent of each of the  
22 remaining Defendants, and in doing the acts alleged herein, was acting within the course and  
23 scope of such agency. Each Defendant ratified and/or authorized the wrongful acts of each of  
24 the defendants. There is a unity of interest and ownership between the Defendants listed above,  
25 such that the acts of the one are for the benefit and can be imputed as the acts of the other.

26 29. Each Defendant entered into or agreed to enter into a conspiracy to do the  
27 wrongful acts alleged in this complaint.  
28

30. Each Defendant acted as the principal, agent, or joint venturer of, or for, other Defendants with respect to the acts, violations, and common course of conducted alleged herein.

31. Whenever this complaint refers to an act, deed or transaction of a corporation or entity, this complaint is alleging that the corporation or entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation or entity's business affairs.

**D. Unnamed Participants and Co-Conspirators**

32. Numerous individuals and entities participated actively during the course of and in furtherance of the scheme described herein. The individuals and entities acted in concert by joint ventures and by acting as agents for principals, in order to advance the objectives of the scheme to benefit Defendants to the detriment of the Plaintiff and the Class.

**IV. CLASS ACTION ALLEGATIONS**

33. This action is brought by Plaintiff, individually and on behalf of all others similarly situated, pursuant to the Sherman and Clayton Antitrust Acts (15 U.S.C. §§ 1, *et seq.*), California's Cartwright Act (Cal. Bus. & Prof. Code § 16720, *et seq.*), California's Unfair Business Practices Act (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), California's False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*) and the Consumer Legal Remedies Act (Civil Code § 1750, *et seq.*) Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23, on behalf of himself and all others similarly situated.

34. The Class is defined as followed: Pursuant to Rule 23 of the Federal Rules Of Civil Procedure, Plaintiff brings this class action on behalf of him/herself and all members of the following class (the "Class"):

All persons and entities throughout the United States who paid for a room at a Hotel Defendant reserved through the Website Retailer Defendants. Expressly excluded are (i) room reservations made as part of a package deal; or (ii) room reservations made without disclosure of the name of the hotel until after paying for the room reservation.

1           35. Pursuant to Rule 23 of the Federal Rules Of Civil Procedure, Plaintiff bring this  
2 class action on behalf of him/herself and all members of the following subclass (the  
3 "California Class"):

4                   All persons and entities throughout the State of California who  
5 paid for a room at a Defendant Hotel reserved through the  
6 Website Retailer Defendants. Expressly excluded are (i) room  
7 reservations made as part of a package deal; or (ii) room  
8 reservations made without disclosure of the name of the hotel  
9 until after paying for the room reservation.

10           36. Plaintiff believes that the Class and California Class include thousands of  
11 consumers and businesses across the United States, though the exact number and the identities  
12 of the Class members are currently unknown. The amount of hotel reservations being done  
13 through the Internet, principally through the Website Retailer Defendants has increased  
14 dramatically over the years. Plaintiff believes that there are hundreds if not thousands of  
15 reservations being made with the Website Retailer Defendants on a daily basis. As such, the  
16 members of the Class and California Class are so numerous that joinder of all Class members is  
17 impracticable.

18           37. Common questions of law and fact exist as to all members of the Class and  
19 California Class and predominate over any questions affecting solely individual members of  
20 the Class and California Class. Nearly all factual, legal, and statutory relief issues raised in this  
21 complaint are common to each of the members of the Class and California Class and will  
22 apply uniformly to every member of the Class and California Class. Among the questions of  
23 law and fact common to Class and California Class members are:

24                   a. whether Defendants engaged in agreements, contracts, combinations,  
25 and conspiracies, which had the purpose and/or effect of unreasonably restraining competition  
26 and limiting purchaser access to competing and lower-priced Room Reservations;

27                   b. whether Defendants unreasonably restrained trade;

28                   c. whether Defendants' anti-competitive contracts, combinations, and  
conspiracies have caused Plaintiff and the other members of the Class and California Class  
to suffer antitrust injury in the nature of overcharges;

1 d. whether Defendants' conduct constitutes fraudulent, unfair or  
2 unlawful business practices;

3 e. whether Defendants' engaged in a campaign of systematic  
4 misrepresentations regarding the pricing of hotel room reservations and whether or not they  
5 were in fact providing "best prices" for hotel rooms reservations;

6 f. whether Defendants' unlawful conduct caused Plaintiff and other Class  
7 and California Class members to pay more for the hotel room reservations than they otherwise  
8 would have paid;

9 g. the appropriate Class-wide measure of damages for hotel room reservation  
10 overcharges;

11 h. whether, and in what amount, Plaintiff and the other Class and California  
12 Class members are entitled to recover treble damages, court costs, and attorneys' fees;

13 i. whether Defendants' anti-competitive conduct is continuing, thus  
14 entitling the Class and California Class to injunctive relief to promote unrestrained trade and  
15 free and fair competition;

16 j. whether Defendants' fraudulent, unfair and unlawful business practices  
17 are continuing, thus entitling the Class and California Class to restitution and/or injunctive  
18 relief to preclude the Defendants from continuing to engage in such wrongful business  
19 practices.

20 38. Plaintiff's claims are typical of the claims of other members of the Class and  
21 California Class because Plaintiff and every member of the Class and California Class have  
22 suffered similar injuries as a result of the same practices alleged herein. Plaintiff has no  
23 interest adverse to the interests of the other members of the Class and California Class.  
24 Plaintiff, like the other members of the Class and California Class has suffered actual harm  
25 from paying inflated prices for hotel room reservations.

26 39. Plaintiff will fairly and adequately represent and protect the interests of the  
27 Class and California Class. Plaintiff has retained able counsel with extensive experience in  
28 class action litigation. The interests of the Plaintiff are coincident with, and not antagonistic to,

1 the interests of the other Class and California Class members.

2 40. The questions of law and fact common to the members of the Class predominate  
3 over any questions affecting only individual members, including legal and factual issues  
4 relating to liability and damages.

5 41. Plaintiff and other members of the Class have suffered damages as a result of  
6 Defendants' unlawful and wrongful conduct. Absent a class action, Defendants will retain  
7 substantial funds received as a result of their wrongdoing, and such unlawful and improper  
8 conduct shall, in large measure, go unremedied. Absent a class action, the members of the  
9 Class will not be able to effectively litigate these claims and will suffer further losses, as  
10 Defendants will be allowed to continue such conduct with impunity and retain the proceeds of  
11 its ill-gotten gains.

12 42. A class action is superior to other available methods for the fair and efficient  
13 adjudication of this controversy because joinder of all Class members is impracticable.

14 43. Moreover, because the damages suffered by individual members of the Class are  
15 relatively small, the expense and burden of individual litigation make it impossible for members  
16 of the Class to individually redress the wrongs done to them. A class action is a superior method  
17 for the fair and efficient adjudication of this controversy since there is an interest in preventing the  
18 Defendants in this case from engaging in a widespread and systematic conspiracy that reduces  
19 competition and negatively impacts consumers. The Class is readily definable, and prosecution  
20 of this action as a class action will eliminate the possibility of repetitious litigation. There will be  
21 no difficulty in the management of this action as a class action.

22 **V. SUBSTANTIVE ALLEGATIONS**

23 **A. The Website Retailer Defendants Become Indispensable to the Hotel**  
24 **Defendants**

25 44. As recently as 1997, the concept of an "internet travel company" or Online  
26 Retailer — an entity organized to effectuate travel plans, reservations and purchases via the  
27 worldwide web — was virtually unknown. Since that time, however, the internet travel  
28 industry has exploded. By some estimates, more than half of all hotel bookings in the



1 United States are made online, many through internet travel companies owned by the  
2 Website Retailer Defendants. The Website Retailer Defendants in this case are the largest  
3 internet travel retailers.

4 45. Through their web portals, the Website Retailer Defendants provide customers  
5 access to many services, including airline tickets, hotel rooms and car rentals. One of the key  
6 services provided to customers is the ability to rent hotel rooms online in many different hotels  
7 throughout the country and the world. The Website Retailer Defendants claim to provide  
8 access to the major hotel chains in the world, which they do. However, the Website Retailer  
9 Defendants conspire with the Hotel Defendants to manipulate the price of hotel room  
10 reservations. The Website Retailer Defendants offer their services to Hotel Defendants and  
11 consumers through several different business models, including the "Agency Model," the  
12 "Merchant Model,"<sup>3</sup> and/or the "Wholesale Model."

13 46. Under the Agency Model, the online travel retailer charges a "service fee" to  
14 hotel operators on a transaction-by-transaction basis for booking customers into rooms at a  
15 given hotel and the consumer pays the hotel for the room directly. Under the Agency Model,  
16 the hotels should be setting — and the online travel retailer should be requiring -- a competitive  
17 price for Room Reservations to increase business and compete against other Online Retailers  
18 offering the same service. In other words, the online travel retailer act as agents for the Hotel  
19 Defendants and get a fee for every room reservation acquired.

20 47. Under the Merchant Model, the online travel retailer does not function merely  
21 as a service provider collecting a fixed transaction fee from the hotels. Rather, the Merchant  
22 Model consists of two independent but related transactions whereby an internet travel  
23 company: (1) first purchases and takes title to inventories of hotel rooms at negotiated rates  
24 from the Hotel Defendants ("wholesale" rates); and (2) then re-sells the rooms to consumers

25  
26 <sup>3</sup> The Agency Model and the Merchant Model are described in the 2002 annual report of  
27 Defendant Expedia, Inc. as filed with the Securities and Exchange Commission on Form 10-K  
28 on March 31, 2003, and the 2004 Annual Report on Form 10-K as filed with the SEC of  
IAC/Interactive Corp. (the parent company, at that time, of Expedia.com, Hotwire.com and  
Hotels.com), p. 9.

1 at higher retail, keeping the difference as profit. Under this Merchant Model, the online  
2 travel retailers should be competing on price by increasing or decreasing the margin added  
3 to the wholesale rates to set the retail rate. For example, one online travel retailer could cut  
4 their margins and charge a lower retail rate in order to get more customers.

5 48. The third model is the "Wholesale Model," whereby smaller price-cutting  
6 online travel retailers obtain access to rooms through wholesalers. Wholesalers, or  
7 intermediaries between the online travel retailers and the hotels, work directly with Hotel  
8 Defendants to obtain last minute blocks of rooms that need to be filled. The wholesalers  
9 then make those rooms available to smaller online travel retailers at a wholesale rate. The  
10 online travel retailers then, like in the Merchant Model, re-sell the rooms to consumers at  
11 higher retail, keeping the difference as profit. Under this Wholesale Model, just like in the  
12 Merchant Model, the online travel retailers can compete for customers through price  
13 competition. Online travel retailers can increase their sales by reducing their margins.

14 49. Originally, by using the Agency Model and Merchant Model, the Website  
15 Retailer Defendants gained a dominant presence in the online sale of hotel room  
16 reservations. The Website Retailer Defendants now hold more than a 50 percent market  
17 share in the internet travel business market. Expedia and its subsidiaries alone account for  
18 approximately 50% of the internet travel business market. Moreover, over time, the Website  
19 Retailer Defendants have become increasingly important to the Hotel Defendants' business  
20 — generating as much as 50% of the Hotel Defendants' room reservation traffic. The Hotel  
21 Defendants cannot remain in business if they ignore the Website Retailer Defendants. Thus,  
22 the Hotel Defendants are forced to accede to the demands of the Website Retailer  
23 Defendants in order to maintain access to the Website Retailer Defendants' distribution  
24 network.

**B. The Website Retailer Defendants Use their Dominance to Impose the RPM Scheme and Prevent Discounting**

50. As a result of their dominance, and knowing that the Hotel Defendants cannot afford to lose access to their distribution network, the Website Retailer Defendants devised an illegal RPM scheme to combat new or more efficient online travel retailers, including those that obtained access to hotel rooms through the Wholesale Model, by extracting from the Hotel Defendants agreements from them that required, on penalty of termination, and as a condition of continuing to do business with the Website Retailer Defendants, that the Hotel Defendants would not allow competing online travel retailers from discounting hotel room reservation rates below the Rack Rate.

51. These illegal agreements between the Website Retailer Defendants and the Hotel Defendants are and were part of an overall agreement to impose and enforce the RPM scheme. For example, in 2004, multiple hotels, including Defendants Hilton and Kimpton, and several of the Website Retailer Defendants, including Defendant Priceline, met together in Las Vegas for EyeForTravel's Second Annual Revenue Management and Pricing in Travel Conference.<sup>4</sup> At the conference, Defendants Hilton, Kimpton and Priceline discussed "rate parity" and "pricing strategies." In fact, Jimmy Shu, VP Revenue Management and Distribution at Defendant Kimpton led a presentation to "address the issues associated with adapting rate parity across all distribution channels...." EyeForTravel has annually sponsored these conferences, and the attendees have expanded to include nearly all of the Defendants.<sup>5</sup>

52. The Hotel Defendants complied with these illegal agreements by requiring that any potential competing online agree to raise and maintain retail prices for hotel room reservation at the Rack Rates. Moreover, in order to ensure compliance with these illegal agreements, the Website Retailer Defendants, and in some instances the Hotel Defendants, threatened online travel retailers with legal action and/or refused to allow online travel

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<sup>4</sup> <http://events.eyefortravel.com/revenue-management/> (last accessed October 8, 2012).

<sup>5</sup> <http://events.eyefortravel.com/travel-distribution-summit-north-america/past-attendees.php> (last accessed October 8, 2012).

1 retailers, such as Skoosh.com, to sell hotel room reservations if the online travel retailers  
2 refused to maintain resale prices at the Rack Rate in compliance with the RPM scheme.  
3 Further, pursuant to their agreement with the Website Retailer Defendants, in some  
4 instances, the Hotel Defendants required the wholesalers to stop providing rooms to price-  
5 cutting online travel retailers, such as Skoosh.com, if they refused to maintain resale prices  
6 at the Rack Rate. These are only some of the mechanisms used by the Website Retailer  
7 Defendants and the Hotel Defendants to engage in price fixing and anticompetitive behavior  
8 to prevent competition in the market for hotel room reservations.

9 53. Skoosh.com has publicly complained that it tried to sell discounted hotel room  
10 reservations on its online travel site but was thwarted by the illegal RPM scheme:

11 'We were openly discounting and hotels would email, call  
12 and threaten legal action,' Skoosh told the BBC.

13 'Either we'd have to raise prices or take the hotels off our list,'  
14 said Dorian Harris from Skoosh.<sup>6</sup>

15 54. In fact, Skoosh has claimed that these illegal agreements amongst and  
16 between the Website Retailer Defendants and the Hotel Defendants have "created a Mafia-  
17 style atmosphere and an intolerable climate for new businesses. Skoosh has been directly  
18 threatened and, in turn, has defended its right to discount hotel prices."<sup>7</sup>

19 55. Skoosh.com published a letter dated August 31, 2010, from its CEO to  
20 Skoosh's competitor Booking.com, one of the Defendants, complaining about Booking.com's  
21 enforcement of the Retailer-Hotel Agreements. The letter states, in part:

22 Both personally, and even as a direct competitor, I was always  
23 a fan of Booking.com. Yours was one of the better hotel  
24 booking sites I always thought, with some innovative features.  
25 However, my rosy picture fast disappeared last winter when  
26 Skoosh started being pursued by your business partners  
27 insisting that we raise our hotel prices to the same as yours. I'm  
28 hoping you can find the time to address some of the points  
below and restore my faith in your company.

26 <sup>6</sup> <http://www.bbc.co.uk/news/business-11330463> (last accessed October 8, 2012).

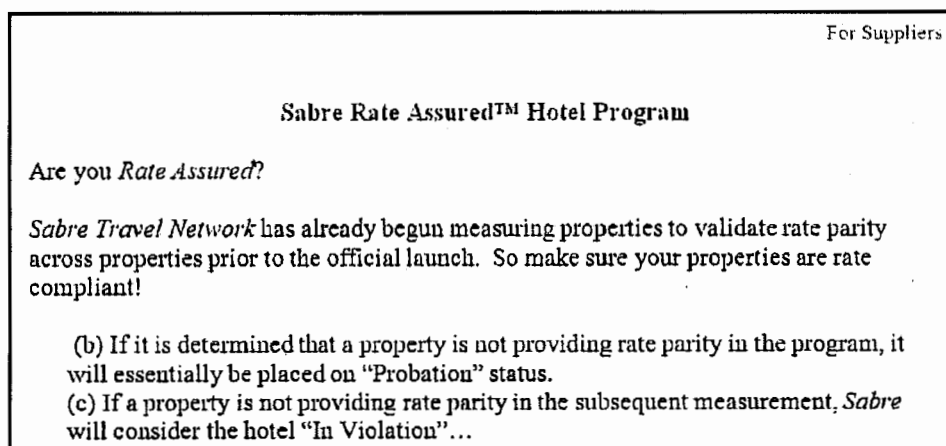
27 <sup>7</sup> <http://www.tnooz.com/2012/07/31/news/regulator-accuses-expedia-booking-com-and-ihg-in-hotel-competition-infringement-probe/> (last accessed August 5, 2012).

1 Some background then. Earlier this year we started getting some  
2 calls from angry and confused hoteliers insisting that we were  
3 selling their rooms too cheaply. I called them back to work out  
4 what was going on and they mostly told me that Booking.com had  
5 been on to them threatening all sorts of nonsense if they didn't  
6 either remove their hotel from Skoosh or force Skoosh to raise its  
7 prices.

8 I wondered how this was all happening so quickly and then I did a  
9 little research and found that Booking.com has an active policy of  
10 maintaining the same prices for all companies across the internet.  
11 I even found a job ad of yours looking for 'Rate Parity  
12 Associates'. It seems like you've got a whole team out there  
13 beaver away to 'find any rate inconsistencies between  
14 Booking.com and their competitors.' They're doing a good job I  
15 have to say. The hoteliers you work with are certainly concerned.  
16 One wrote to ask me to close out their hotel on Skoosh: 'just to  
17 avoid the penalty that Booking.com is threatening us about'.

18 Some were less friendly. Many of the hoteliers wrote letters to  
19 me threatening legal action. One of them had a colleague of  
20 yours on one line and me on the other. It seemed that your  
21 colleague was insisting that if we hadn't removed their hotel  
22 from Skoosh by the end of the phone call Booking.com would  
23 cancel the contract with them. They were very scared.<sup>8</sup>

24 56. The fact that Booking.com has threatened to cut off the sale of hotel room  
25 reservations for Hotel Defendants that do not enforce the RPM scheme is consistent with the  
26 Rate Assured Hotel Program implemented by Booking.com's parent, Defendant Sabre (which  
27 also owns Defendant Travelocity). Sabre's Rate Assured Hotel Program requires the Hotel  
28 Defendants to enforce the RPM scheme:<sup>9</sup>



26 <sup>8</sup> <http://dorian.skoosh.com/open-letter-to-kees-koolen-ceo-at-booking-com/> (last accessed,  
27 October 8, 2012).

28 <sup>9</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed  
October 8, 2012).

Defendant Hilton required Skoosh.com's wholesale supplier in the United States, AlliedTPro, to entirely cut off its contract with Skoosh.com as a result of Skoosh.com's discounting and Defendant Hilton's enforcement of the Retailer-Hotel Agreements. AlliedTPro wrote to Skoosh.com: "Trust me I would welcome the additional business but cannot risk our contracts with Hilton."<sup>10</sup>

Defendant Trump expressly admitted it was enforcing the Retailer-Hotel Agreements, emailing Skoosh.com:<sup>11</sup>

**From:** [REDACTED]  
**Sent:** 10 May 2010 18:27  
**To:** Dorian Harris  
**Subject:** RE: New Inquiry was submitted on Skoosh.com

The simple answer is; if we do not maintain parity with all, we are threatened with poor placement on sites and worst case... removal of hotel from sales sites. That is the way the OTA's operate in USA. Expedia threatens if Travelocity gets lower rate and vice-versa. It is a vicious cycle if we get out of parity.  
 I think the model in Europe is built to operate more competitively but that is not the model here. (Much as I wish it was the same as Europe!) I hope this helps you understand why we must be strict with what is offered on all websites.  
 Thanks,  
 [REDACTED]  
 Trump International [REDACTED]

Defendant Intercontinental wrote to Skoosh.com "demanding that Skoosh either raise[] its rates to the same as the hotels and its other distribution partners (a practice known in the industry as 'rate parity') or remove the hotels entirely from our site."<sup>12</sup> In 2003, Defendant Marriott announced "a sweeping overhaul of its transient pricing, bringing parity to all Marriott distribution channels — offline and online."<sup>13</sup> During the Class Period, Marriott was among the Hotel Defendants threatening Skoosh.com with legal action and/or the withdrawal of their hotel room reservations if Skoosh.com did not maintain rate parity. Rate

<sup>10</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed October 8, 2012).

<sup>11</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed October 8, 2012).

<sup>12</sup> <http://dorian.skoosh.com/open-letter-to-william-baer-arnold-porter-llp/> (referring to Holiday Inn New York) (last accessed October 8, 2012).

<sup>13</sup> <http://www.businesstravelnews.com/More-News/Marriott-Revamps-Pricing--Offers-Complete-Parity,-Curtails-Fixed-Consortia-Rates/?a=btn> (last accessed October 8, 2012).

1 parity means nothing less than illegal price fixing that causes injury to consumers by reducing  
2 competition in the market for hotel room reservations.

3 Defendant Starwood also enforces the RPM scheme. "In one email to a hotel  
4 discounter, an executive at Starwood, which runs Le Meridien, Westin, W and Sheraton  
5 hotels, said: 'Should a wholesaler decide to sell the rooms on a room only basis, he has to  
6 make sure that the per contract agreed minimum mark-up is guaranteed.' The employee said  
7 the 'violation' of Starwood's Best Rate Guarantee was 'really serious' and the breach was  
8 reported to the Brussels headquarters."<sup>14</sup>

9 57. Similarly, Kayak.com, which is a price comparison website, told Skoosh.com  
10 on several occasions that it had to "play the Orbitz game,"<sup>15</sup> *i.e.* maintain rate parity, or  
11 Kayak would no longer publish Skoosh.com's prices. Kayak advertises itself as the  
12 company that can help a consumer choose between the Website Retailer Defendants and  
13 other online travel retailers to find the best prices, including the best prices for hotels.  
14 Kayak, however, apparently felt pressured to enforce rate parity on behalf of the Website  
15 Retailer Defendants because, for example, Orbitz accounted for 18.8% of Kayak's total  
16 revenues and Expedia and its affiliates accounted for 24.9% of Kayak's total revenues for  
17 the nine months ended September 30, 2010.<sup>16</sup> After Skoosh.com reported the RPM scheme  
18 to governmental authorities, Kayak stopped publishing Skoosh.com's prices on its price  
19 comparison site. In other words, Kayak, which promised consumers it would find the best  
20 prices amongst the Website Retailer Defendants was part of the conspiracy, ensuring that  
21 the same manipulated prices were being offered to all consumers.

22 58. Each of this occurred because of the illegal and anticompetitive pressure the  
23 Website Retailer Defendants were placing on Hotel Defendants to protect the Website  
24 Retailer Defendants' margins by enforcing the RPM scheme. The Hotel Defendants enforced

25 <sup>14</sup> [http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-faceinquiry-in-price-fixing-scandal.html)  
26 [faceinquiry-in-price-fixing-scandal.html](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-faceinquiry-in-price-fixing-scandal.html) (last accessed October 8, 2012).

27 <sup>15</sup> <http://dorian.skoosh.com/open-letter-to-steve-hafner-c-e-o-kayak-com/> (last accessed  
October 8, 2012).

28 <sup>16</sup> <http://www.businessinsider.com/kayak-ipo-2010-11> (last accessed October 8, 2012).

1 the RPM scheme because they feared losing access to the Website Retailer Defendants'  
2 website to sell their rooms if they did not. As one industry consultant explained:

3 'I don't know that there's been enough public questioning of this  
4 [rate parity] practice,' said Ashwin Kamlani, founder of Hotel  
5 Internet Help Inc., which helps independent hotels get more sales  
6 via cyberspace.

6 'The hotels enforce rate parity because they fear the  
7 consequences of not maintaining rate parity,' he said. 'They fear  
8 having their hotel dropped to page 6 or even pulled off their  
9 largest producing [onlinetravel agents] sites, which translates into  
10 a potentially significant loss of revenue.'<sup>17</sup>

9 59. Blink Booking, a mobile-only hotel booking service, echoed the claims of  
10 competing online travel retailers, saying: "We've long believed that the big online travel  
11 agents have been guilty of denying consumers the best prices — and that hotels' hands are  
12 tied by price parity agreements. The online travel market may appear to offer plenty of  
13 choice and competition, but the reality is that there are lots of different shop windows  
14 selling the same rooms at the same prices — with those prices agreed through parity deals  
15 between the big groups and the big OTAs [online travel agents]."<sup>18</sup>

16 60. The Hotel Defendants were active participants in the conspiracy because they  
17 knew that the Website Retailer Defendants would enforce the illegal agreements. The Hotel  
18 Defendants could draw upon their own past experience to know that the Website Retailer  
19 Defendants were serious about enforcing the conspiracy. For example, in 2009, Defendant  
20 Expedia refused to list or sell hotel room reservations from Choice Hotels. Expedia's CEO  
21 and President Dara Khosrowshahi explained:

22 '...As far as the discussions that we've had with Choice, we are not  
23 doing business with Choice right now on a chain basis. We don't  
24 have a vast majority of Choice hotels on our side,' said  
25 Khosrowshahi

26 <sup>17</sup> Karin Robinson-Jacobs, "Practice that holds rates steady among Hotel Defendants, travel  
27 sites coming under fire," Dallas Morning News (Nov. 16, 2010), reprinted at  
28 <http://hsmidfw.blogspot.com/> (last accessed August 15, 2012).

<sup>18</sup> [http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/  
OFT-alleges-Intercontinental-Hotels-online-deals-broke-competition- law.html](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-alleges-Intercontinental-Hotels-online-deals-broke-competition-law.html) (last accessed  
October 8, 2012).



1 ...he added, 'First of all, our primary goal is to have the broadest,  
2 deepest set and highest quality set of inventory for the benefit of  
3 our customers. And this doesn't signal any kind of change in our  
4 overall philosophy as far as how we work with our hotel partners  
5 and what we're looking at. It's not really an issue of economics; it's  
6 more than issue of our wanting rate parity and inventory parity for  
7 our customers.'

8 'When our customers come to Expedia, we want them to know that  
9 they're getting the best prices and certainly, we are insistent on  
10 that. And to the extent that Choice doesn't want to work under  
11 those terms. We won't be doing business with each other. Those  
12 are the terms that we work with our others strategic partners,  
13 they're comfortable where they were comfortable with it. So, it's  
14 nothing usual from what I would say is typical practice for us in  
15 most of our other OTA competitors so to speak.'<sup>19</sup>

16 61. Through this conspiracy, the Website Retailer Defendants sought and received  
17 agreements from the Hotel Defendants that they would only sell hotel room reservations to  
18 those online travel retailers who would not discount the Rack Rates, even if and when it reduced  
19 the Hotel Defendants' sales and/or profits by slowing sales of the hotel room reservations.

20 62. More specifically, the Hotel Defendants agreed to work with the Website  
21 Retailer Defendants to implement and enforce the RPM scheme to ensure that pricing by  
22 competing Online Retailers be restrained.

23 63. The Website Retailer Defendants sought and obtained the agreement of the  
24 Hotel Defendants to impose and enforce "rate parity" — *i.e.*, restraint on price competition —  
25 solely for the Website Retailer Defendants' benefit and not for any legitimate pro-competitive  
26 reason.

27 64. The Website Retailer Defendants are driven to maintain their dominant position  
28 in the online travel market and to maintain their high profit margins, as their margins are being  
threatened by newer, more efficient online travel retailers. That dominant retailers, like the  
Website Retailer Defendants, have reacted and are reacting in an anticompetitive manner to  
threats to their pricing power, such as those posed by new or more efficient online travel  
retailers. The United States Supreme Court has recognized that the behavior of the Website

<sup>19</sup> <http://www.eyefortravel.com/distribution-strategies/expedia-stresses-rate-parity-and-inventory-parity-its-customers> (last accessed October 8, 2012).

1 Retailer Defendants and the Hotel Defendants here constitutes a violation of federal antitrust  
2 laws.

3 65. The United States Supreme Court not only recognized that minimum resale  
4 pricing may be imposed by a dominant retailer for that retailer's benefit, but stated that such  
5 behavior violates the antitrust laws. Indeed, the United States Supreme Court cautioned that:

6 [r]esale price maintenance, furthermore, can be abused by a  
7 powerful manufacturer or retailer. A dominant retailer, for  
8 example, might request resale price maintenance to forestall  
9 innovation in distribution that decreases costs. A manufacturer  
10 might consider it has little choice but to accommodate the retailer's  
11 demands for vertical price restraints if the manufacturer believes  
it needs access to the retailer's distribution network. *See*  
Overstreet 31; 8 P. Areeda & H. Hovenkamp, Antitrust Law 47 (2d  
ed. 2004) (hereinafter Areeda & H. Hovenkamp); *cf. Toys "R" Us,*  
*Inc. v. FTC*, 221 F.3d 928, 937-938 (7th Cir. 2000).

12 \* \* \*

13 As should be evident, the potential anticompetitive consequences  
14 of vertical price restraints must not be ignored or underestimated.

15 *Leegin Creative Leather Prods., Inc. v. PKS, Inc.*, 127 S. Ct. 2705, 2719-2720 (2007).

16 **C. The RPM Scheme Has Purposefully Resulted in "Rate Parity" for Hotel  
17 Room Reservations through the Website Retailer Defendants — Allowing the  
18 Website Retailer Defendants to Always Guarantee the "Best" (Albeit Same) Prices**

19 66. The RPM Scheme has achieved its illegal goal: Website Retailer Defendants  
20 do not compete on the basis of price for hotel room reservations. Rather, all online sales of  
21 hotel room reservations for the same rooms are at the Rack Rate.

22 67. Deposition testimony of Tim Gordon, Senior Vice President, of Priceline makes  
23 clear that each of the Website Retailer Defendants buys the rooms and sells the rooms to the  
24 public at exactly the same price:

25 Q. And in fact, sir, let's take a look at ALL22. And this is a  
26 printout I did back in September for a night's stay at the  
27 Hilton in San Antonio .... \$219 rate, taxes and then a  
28 total. And then if you will look through, I've printed  
out from the various websites of the defendants, same  
hotel, same night. Orbitz has its \$219.00 rate. Cheap  
Tickets has its \$219.00 rate. Lowest Fare has a \$219.00  
rate. Priceline, \$219.00 rate. Travel Now, \$219.00.  
Expedia, \$219.00. And Hotels.com, \$219.00. Every  
website lists this room on this night at the exact same  
room rate. And you know — you know, based upon the

1 way the contracts work, that doesn't surprise you, does  
2 it?

3 A. No.

4 Q. And why doesn't that surprise you?

5 A. Because in general — and I can't be too specific because I  
6 don't know the exact terms of this agreement, but in  
7 general the contracts require us to take a net rate that they  
8 provide and mark it up by a specific amount. And they  
9 require us to mark it up by that amount.

10 Q. By that exact amount?

11 A. Yes.

12 Q. And your understanding is that you have best price  
13 guarantee from Hilton where they can offer your  
14 competitors more heavy discounts than they can offer  
15 Priceline, correct?

16 A. That is true.

17 \* \* \*

18 Q. All right. And so given the Most Favored Nations  
19 Clause that Hilton has, your understanding would be  
20 everybody — all these competitors are being provided this  
21 room at the same price and marking it up by the same  
22 amount resulting in the same retail rate, correct?

23 A. I believe that to be true.

24 68. In fact, a federal court in the Western District of Texas recently commented  
25 on the similarity of the business models and pricing structures of the Website Retailer  
26 Defendants:

27 After reviewing the record, it is clear that the Defendants not  
28 only engage in a common course of conduct, but that many of  
their business practices are virtually identical. These practices  
include but are not limited to the manner in which they  
contract with the Hotel Defendants, the manner in which they  
determine and assess cancellation policies and fees, the  
manner in which they determine the mark up and fees to  
arrive at an acceptable margin and retail/sell rate; and, the  
manner in which they calculate, assess and pay hotel  
occupancy taxes. The deposition testimony of the corporate  
representatives, standing alone, reflects an amazing similarity  
in practice, procedure and corporate methodology among all of  
the [Website Retailer Defendants]. Memorandum and Opinion  
on Class Certification, City of San Antonio v. Hotels. com, et  
al., No. SA-06- CA-381-OG (W.D. Tex) (the "San Antonio  
Class Cert Order") at 1819 (emphasis added).

1           69. The Court determined, based upon deposition testimony, that the margins of  
2 each of the Website Retailer Defendants were identical to the other Website Retailer  
3 Defendants:

4                   Almost without exception, the net rate and sell rate for a given  
5 room on a given day are the same among the [Website Retailer  
6 Defendants] because the Defendants' agreements with the Hotel  
7 Defendants all contain "parity" or "Most Favored Nation"  
8 clauses.

9                   This also makes the [ITC] margins the same. *Id.* at 20, n. 21  
10 (citations to deposition testimony omitted).

11           70. That the rate parity stems from the illegal RPM scheme is evident. The Website  
12 Retailer Defendants employ "market managers" who "monitor closely a hotel's rates across all  
13 channels, and if a preferential rate was given to one over the other that hotel could face dire  
14 penalties."<sup>20</sup> In fact, as Hotel Defendants started experimenting with price discounting by  
15 offering "tiered pricing," the Website Retailer Defendants started to demand Hotel Defendants  
16 stop competing with online retailers on price.

17           71. An industry expert recounts that Hotel Defendants seeking to promote price  
18 discounts in order to have consumers buy directly from the hotel were met with the Website  
19 Retailer Defendants demanding price competition cease. According to the industry source,  
20 "Hilton, for example, is promoting like crazy to get the customer to book direct. 'Book with  
21 us and get 500 extra points or free Internet.' But this competition was unacceptable to the  
22 Website Retailer Defendants and contrary to the RPM scheme. "That's where the [Website  
23 Retailer Defendants] were forced to become big proponents of rate parity." So the Website  
24 Retailer Defendants ensured that the Hotel Defendants could not "undercut," *i.e.*, *price*  
25 *compete*, by entering into Defendant Retailer-Hotel Agreements and the RPM scheme.

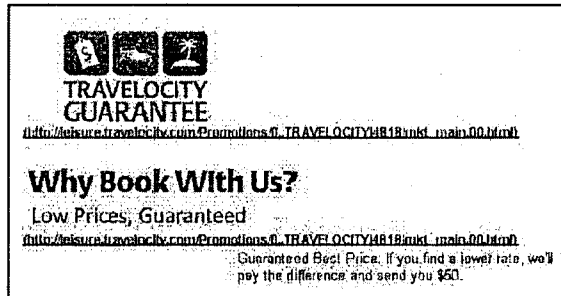
26           72. As a result of the "success" of the RPM scheme, the Website Retailer Defendants  
27 are confident that all of the prices listed between them for the same room will be identical. Thus,  
28 they each offer a near identical "best price" guarantee — knowing it is the **only price** available,

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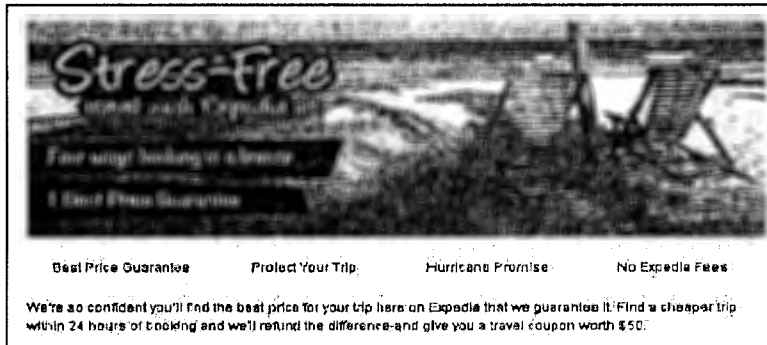
<sup>20</sup> <http://www.hotelnewsnow.com/Articles.aspx/8469/Revenue-managers-predict-end-of-OTAs-parity> (last accessed October 8, 2012)

even among competitors. The following are examples of the "guarantees" offered by the major Website Retailer Defendants:

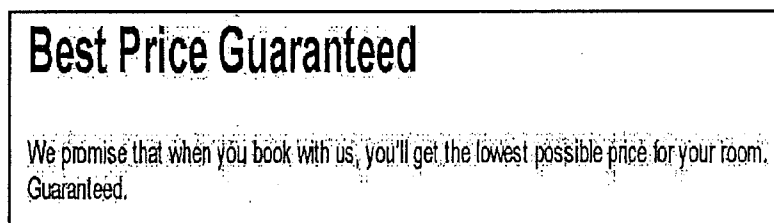
a. **Travelocity's Guaranteed Low Prices**



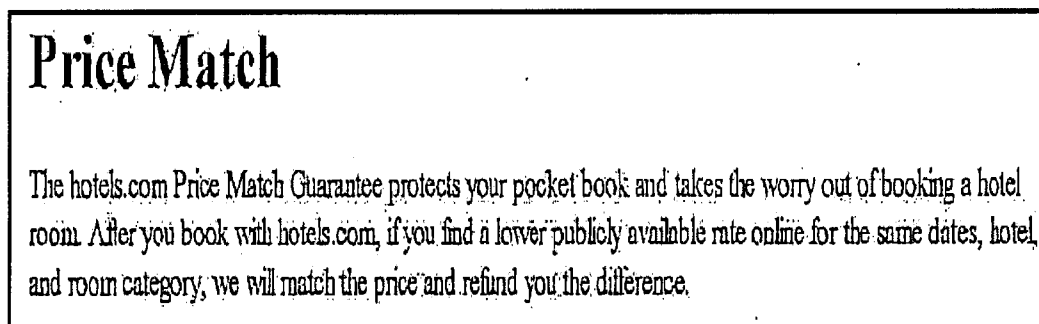
b. **Expedia's Best Price Guarantee**



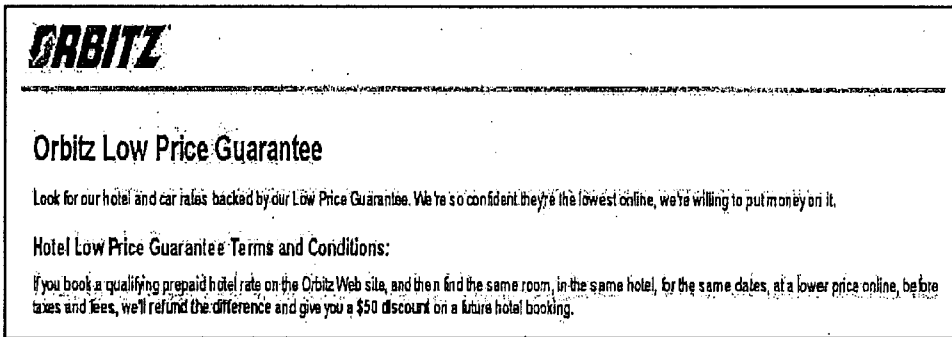
c. **Booking.com Best Price Guarantee**



d. **Hotels.com Price Match Guarantee**



e. **Orbitz Low Price Guarantee**



73. Absent the RPM scheme, the Website Retailer Defendants could not offer the best price guarantees unless they engaged in price competition and discounted the Rack Rates.

74. The RPM Agreements, and the scheme in restraint of trade, have harmed competition in the relevant market(s) and caused prices to be higher in the relevant market(s) than the prices would have been without the Agreements.

75. In addition, the uniform adoption and enforcement of "rate parity" and most favored nation clauses by the Website Retailer Defendants is a horizontal *per se* price fixing agreement.

76. The Agreements were specifically intended to protect the Defendants from price competition — both from Hotel Defendants and other highly efficient retailers — offering the same inventory. Thus, Defendants agreed to restrain competition by mandating higher price levels and thereby suppressing the competition or by eliminating the price cutting entirely. This RPM scheme achieved its goals, and thereby substantially inflated prices to consumers like Plaintiffs.

**D. Investigation by Governmental Authorities**

77. This price-fixing conspiracy is evidently not confined to the United States. The British Office of Fair Trade ("OFT") recently issued a "Statement of Objections" alleging that Expedia, Inc. infringed competition through the very same price fixing agreements with respect to British hotel rooms. The *Telegraph* reported that Expedia admitted that "it has engaged in cartel conduct on breach of the law," and is "providing information on its rivals under a 'leniency deal' with the British authorities."

1           78.     This conspiracy is not limited to the United Kingdom. The Website Retailer  
2 Defendants are entering into contracts with the same Hotel Defendants in the United States of  
3 America, which are causing the same anticompetitive effects here. These illegal Retailer-Hotel  
4 Agreements are part of an anti-competitive scheme under which the Website Retailer  
5 Defendants leveraged their substantial market power and dominance to induce the Hotel  
6 Defendants into agreeing to do one or more of the following: (a) impose minimum resale price  
7 maintenance agreements on competing online travel retailers; (b) enforce the price maintenance  
8 agreements as to all online travel retailers; and/ or (c) cut off supply to price-cutting online  
9 travel retailers.

10           79.     The Hotel Defendants similarly engaging in a conspiracy to do the following  
11 pursuant to an illegal agreement between and amongst themselves did *not* and are *not* simply or  
12 unilaterally:

- 13                   a.     refraining from selling to uncongenial retailers;
- 14                   b.     suggesting resale prices that were widely followed;
- 15                   c.     sanctioning, terminating or refusing to sell to retailers who failed to  
16                            maintain a minimum resale price;
- 17                   d.     announcing and enforcing policies of sanctioning, terminating or  
18                            refusing to sell to retailers who failed to maintain a minimum resale  
19                            price; or
- 20                   e.     sanctioning, terminating or refusing to sell to other retailers following,  
21 or in response to, complaints by retailers such as the Website Retailer Defendants.

22           80.     Rather, the Retailer-Hotel Agreements represent a conscious commitment to  
23 a common scheme, designed to achieve an unlawful objective, between the Website  
24 Retailer Defendants, the Hotel Defendants and other online travel retailers, who either  
25 were part of the conspiracy or knew of the conspiracy and allowed it to continue.

26           81.     The Hotel Defendants did not act unilaterally or independently, or in their  
27 own economic interests, when:  
28

- a. entering into the Retailer-Hotel Agreements;
- b. seeking online travel retailers' acquiescence to, and compliance with, the terms of the Retailer-Hotel Agreements;
- c. seeking to have retailers charge minimum resale prices; or
- d. terminating or refusing to sell to online retailers for violating the Retailer-Hotel Agreements. In fact, absent threatened penalties or sanctions by the Website Retailer Defendants, it would not be in the Hotel Defendants' economic interest to enter into, maintain, or enforce the Retailer-Hotel Agreements.

## **VI. MONOPOLY/MARKET POWER**

82. The Website Retailer Defendants and the Hotel Defendants exercise monopoly power in the market for the online purchase and sale of hotel room reservations. The Website Retailer Defendants have market power and control over the Internet travel market while the Hotel Defendants have market power and control over the hotel market. Combined, the Website Retailer Defendants and the Hotel Defendants can control the prices available for hotel room reservations.

83. The relevant product market in this case is the online retail purchase and sale of hotel room reservations. The relevant geographic market in this case is the United States for the Class and/or the State of California for the California Class.

84. By virtue of their power to control prices and exclude competition in the relevant market(s), the Website Retailer Defendants at all relevant times possessed monopoly power in the relevant market(s). The Website Retailer Defendants and their subsidiaries hold over a 50 percent market share in the Internet travel market. Moreover, the Website Retailer Defendants possess a dominant share of the market(s) for online retail sales of hotel room reservation. The Hotel Defendants have a dominant share of the market(s) for hotel rooms, especially within the United States and the State of California.



**VII. MARKET EFFECTS OF AND ANTITRUST INJURY DUE TO DEFENDANTS' ANTICOMPETITIVE CONDUCT**

85. The overall effect of Defendants' anti-competitive, exclusionary scheme has been to substantially foreclose and impair competition (and the threat of such competition) for lower-priced hotel room reservations. The conspiracy that the Defendants agreed to was designed to preclude and prevent outside competitors, as well as to ensure that the members of the conspiracy abide by the RPM agreements entered into between and amongst the Website Retailer Defendants and the Hotel Defendants.

86. As alleged above, had the Defendants not improperly foreclosed or stifled actual or potential competitors from competing in the relevant market, other actual or potential rival retailers would have achieved much greater sales than they actually did (or threatened to do), given the lower prices that they charged (or could have charged upon entry), and would have posed a far greater competitive threat to the Defendants. Additionally, absent the Defendants' exclusionary conduct, barriers to entry to the market would have been lower, which: (a) would have made it easier for existing or new competitors to enter or expand their positions in the relevant market, and (b) would have caused existing or potential competitors to be attracted to the market for hotel room reservations because of the supra-competitive prices that the Defendants were charging. As a result, absent the Defendants' misconduct, the Defendants would have rationally perceived that there was a greater threat of potential competition in the relevant market if the Defendants did not reduce their supra-competitive prices.

87. The presence of unfettered competition from actual or potential competitors, which were selling lower-priced hotel room reservations, would have forced the Defendants to lower the prices in order to remain competitive and/or to counter a perceived threat of additional entry.

88. During the relevant time period, Plaintiff and the other members of the Class purchased hotel room reservations directly from the Defendants. As a result of the Defendants' alleged misconduct, Plaintiff and the Class were compelled to pay, and did pay,

1 artificially inflated prices for the hotel room reservations they purchased. Plaintiffs would  
2 have been able to, *inter alia*, purchase less-expensive hotel room reservations had potential  
3 competitors been able to engage in unfettered competition. The prices that Plaintiff and the  
4 Class paid for hotel room reservations during the Class Period were substantially greater  
5 than the prices that Plaintiff and the Class would have paid absent the illegal conduct  
6 alleged herein because: (1) the prices of all hotel room reservations were artificially inflated  
7 by the Defendants' illegal conduct; and (2) Class members were deprived of the opportunity  
8 to purchase hotel room reservations from the Defendants' competitors at substantially lower  
9 prices. Thus, Plaintiff and the Class have, as a consequence, sustained substantial damages.

#### 10 11 **VIII. FRAUDULENT CONCEALMENT**

12 89. Plaintiff repeats and re-alleges each of the foregoing allegations as if fully set  
13 forth herein.

14 90. Plaintiff did not discover and could not have discovered through the exercise of  
15 reasonable diligence the existence of the claims sued upon herein until immediately prior to  
16 commencing this civil action. The Defendants engaged in a campaign of systematic concealment  
17 to hide the nature and extent of their conspiracy.

18 91. Any applicable statutes of limitation have been tolled by Defendants' affirmative  
19 acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above  
20 reveal.

21 92. Because of the self concealing nature of Defendants' actions and their affirmative  
22 acts of concealment, Plaintiff and the Class assert the tolling of any applicable statutes of  
23 limitations affecting the claims raised herein.

24 93. Defendants continue to engage in the deceptive practice, and consequently,  
25 unwary consumers are injured on a daily basis by Defendants' unlawful conduct. Therefore,  
26 each instance that Defendants engaged in the conduct complained of herein and each instance  
27 that a member of the Class purchased a hotel room reservation (which is the subject of the  
28 Defendants' antitrust conspiracy) constitutes part of a continuing violation and operates to toll

1 the statutes of limitation in this action.

2 94. Defendants are estopped from relying on any statute of limitations defense  
3 because of their unfair or deceptive conduct.

4 95. Defendants' conduct was and is, by its nature, self-concealing. Still, Defendants,  
5 through a series of affirmative acts or omissions, suppressed the dissemination of truthful  
6 information regarding their illegal conduct, and have actively foreclosed Plaintiff and the Class  
7 from learning of their illegal, anti-competitive, unfair and/or deceptive acts.

8 96. By reason of the foregoing, the claims of Plaintiff and the Class are timely under  
9 any applicable statute of limitations, pursuant to the discovery rule, the equitable tolling  
10 doctrine, and fraudulent concealment.

11 **IX. CAUSES OF ACTION**

12 **COUNT I**

13 **VIOLATION OF 15 U.S.C. § 1, *et seq.***  
14 **(AGREEMENTS UNREASONABLY RESTRAINING TRADE)**

15 97. Plaintiff hereby incorporates each preceding and succeeding paragraph as though  
16 fully set forth herein.

17 98. The illegal antitrust agreements entered into between and amongst the Website  
18 Retailer Defendants and the Hotel Defendants, and their enforcement, constitute contracts,  
19 combinations and conspiracies that substantially, unreasonably, and unduly restrain trade in the  
20 relevant market(s), and harmed Plaintiff and the Class.

21 99. The illegal antitrust agreements entered into between and amongst the Website  
22 Retailer Defendants and the Hotel Defendants cover a sufficiently substantial percentage of the  
23 relevant market(s) to harm competition.

24 100. The Defendants are liable for the creation, maintenance, and enforcement of the  
25 illegal antitrust agreements under *aper se*, "quick look" and/or rule of reason standard.

26 101. The Defendants possess market power.

27 102. The illegal antitrust agreements entered into between and amongst the  
28 Website Retailer Defendants and Hotel Defendants harm competition by artificially raising

1 and stabilizing prices.

2 103. There is no legitimate, pro-competitive business justification for the misconduct  
3 of the Defendants, as well as the conspiratorial antitrust agreements entered into between and  
4 amongst the Website Retailer Defendants and the Hotel Defendants, that outweighs their harmful  
5 effect. Even if there were some conceivable justification, the illegal antitrust agreements are  
6 broader than necessary to achieve such a purpose.

7 104. Plaintiff and the Class were injured in their business or property by the  
8 collusion and conspiracy alleged above which facilitated, enabled, assisted or furthered  
9 Defendants' substantial foreclosure and exclusion of competition in the relevant market(s).

10 105. Without limiting the generality of the foregoing, Plaintiffs and the other  
11 members of the Class have been forced to pay higher prices for hotel room reservations than  
12 they would have paid in the absence of Defendants' unlawful conduct.

13 106. The misconduct of the Defendants and the illegal agreements they entered into  
14 are in violation of the federal antitrust laws, including the Sherman and Clayton Antitrust Acts  
15 (15 U.S.C. § 1, *et seq.*)

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF THE CARTWRIGHT ACT**

18 **(CALIFORNIA BUSINESS & PROFESSIONS CODE §§16720, *et seq.*)**  
19 **(CALIFORNIA CLASS ONLY)**

20 107. Plaintiff hereby incorporates each preceding and succeeding paragraph as though  
21 fully set forth herein.

22 108. The illegal antitrust agreements entered into between and amongst the Website  
23 Retailer Defendants and the Hotel Defendants, and their enforcement, constitute contracts,  
24 combinations and conspiracies that substantially, unreasonably, and unduly restrain trade in the  
25 relevant market(s), and harmed Plaintiff and the Class.

26 109. The illegal antitrust agreements entered into between and amongst the Website  
27 Retailer Defendants and the Hotel Defendants cover a sufficiently substantial percentage of the  
28 relevant market(s) to harm competition.

110. The Defendants are liable for the creation, maintenance, and enforcement of the

1 illegal antitrust agreements under *aper se*, "quick look" and/or rule of reason standard.

2 111. The Defendants possess market power.

3 112. The illegal antitrust agreements entered into between and amongst the  
4 Website Retailer Defendants and Hotel Defendants harm competition by artificially raising  
5 and stabilizing prices.

6 113. There is no legitimate, pro-competitive business justification for the misconduct  
7 of the Defendants, as well as the conspiratorial antitrust agreements entered into between and  
8 amongst the Website Retailer Defendants and the Hotel Defendants, that outweighs their harmful  
9 effect. Even if there were some conceivable justification, the illegal antitrust agreements are  
10 broader than necessary to achieve such a purpose.

11 114. Plaintiff and the Class were injured in their business or property by the  
12 collusion and conspiracy alleged above which facilitated, enabled, assisted or furthered  
13 Defendants' substantial foreclosure and exclusion of competition in the relevant market(s).

14 115. Without limiting the generality of the foregoing, Plaintiffs and the other  
15 members of the Class have been forced to pay higher prices for hotel room reservations than  
16 they would have paid in the absence of Defendants' unlawful conduct.

17 116. The misconduct of the Defendants and the illegal agreements they entered into  
18 are in violation of the federal antitrust laws, including the California Cartwright Act (Cal. Bus.  
19 & Prof Code. §§ 16720, *et seq.*)

20 **THIRD CAUSE OF ACTION**

21 **VIOLATION OF THE UNFAIR COMPETITION LAW**

22 **(CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 16720, *et seq.*)**  
23 **(CALIFORNIA CLASS ONLY)**

24 117. Plaintiff hereby incorporates each preceding and succeeding paragraph as though  
25 fully set forth herein.

26 118. Defendants have engaged in unfair competition within the meaning of the  
27 California Business & Professions Code §§ 17200 *et seq.* because Defendants' conduct is  
28 fraudulent, unfair and unlawful. Defendants misrepresented the fact that they were offering the  
"best prices" when the reality was that the only price being offered by the Defendants for hotel

1 room reservations was the price that had been artificially manipulated and set by the Defendants.

2 119. Defendants' business practices are unlawful because they violate federal and  
3 California antitrust laws, as well as all of the other federal and California statutes alleged herein.

4 120. Defendants' business practices are unfair because there is no justification for these  
5 improper business practices that outweighs the harm that such business practices inflict upon  
6 consumers, including Plaintiff and the Class. Defendants' business practices and each of them  
7 offend established public policy and/or are immoral, unethical, oppressive, unscrupulous  
8 and/or substantially injurious to consumers, which harm greatly outweighs any benefit  
9 associated with the business practice. California has an interest in preserving a business  
10 environment free of fraud and deceptive business practices.

11 121. Plaintiff has standing to pursue this claim because he has been injured by virtue  
12 of suffering a loss of money and/or property as a result of the wrongful conduct alleged  
13 herein. Plaintiff would not have purchased his hotel rooms nor paid as much for it had he  
14 known the truth.

15 122. Plaintiff and the Class are entitled to relief, including full restitution and/or  
16 restitutionary disgorgement, to the greatest extent permitted by law, which may have been  
17 obtained by Defendants as a result of such business acts or practices, and enjoining  
18 Defendants to cease and desist from engaging in the practices described herein.

19 **FOURTH CAUSE OF ACTION**

20 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**

21 **(CALIFORNIA CIVIL CODE §§ 1750, *et seq.*)**  
22 **(CALIFORNIA CLASS ONLY)**

23 123. Plaintiff hereby incorporates each preceding and succeeding paragraph as though  
24 fully set forth herein.

25 124. The Consumers Legal Remedies Act, Civil Code Section 1750 *et seq.* (hereinafter  
26 "CLRA") was designed and enacted to protect consumers from unfair and deceptive business  
27 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in  
28 Civil Code Section 1770.

1  
2 125. The CLRA applies to Defendants' actions and conduct described herein because it  
3 extends to the sale of goods or services for personal, family or household use.

4 126. At all relevant times, Plaintiffs and members of the Class were "consumers" as  
5 that term is defined in Civil Code Section 1761(d).

6 127. The transactions from which this action arises include transactions involving the  
7 sale or lease of goods or services for personal, family or household purposes within the meaning  
8 of Civil Code Section 1761.

9 128. Each of these defendants represent that their rates are the "Best Price" or a "Low  
10 Price," or similar words intended to convey to consumers that the consumer was obtaining a  
11 good deal.

12 129. These representations are false and misleading in that there is no "Best" or "Low"  
13 price, just a fixed and uniform price.

14 130. Defendants' practices in connection with the marketing and sale of online rooms  
15 violate the CLRA in at least the following respects:

16 a. In violation of Section 1770(a)(5), Defendants knowingly misrepresented the  
17 character, uses and benefits of the rooms;

18 b. In violation of Section 1770(a)(9), Defendants have knowingly advertised the  
19 online rooms with the intent not to sell them as advertised; and

20 c. In violation of Section 1770(14), Defendants knowingly misrepresented the legal  
21 rights, obligations, or remedies involved in the purchase and sale of online rooms.

22 131. Defendants' misrepresentations, failure to disclose, and knowing concealment of  
23 the prices for hotel rooms are misrepresentations, omissions, and concealments of material fact  
24 that constitute unfair and/or deceptive business practices in violation of Civil Code § 1770(a) and  
25 caused harm to Plaintiffs and Class members who would not have purchased and/or paid as  
26 much for their rooms had they known the truth.

27 132. In accordance with Civil Code § 1780 (a), Plaintiff and the Class seek  
28 injunctive and equitable relief for violations of the CLRA. In addition, after mailing

1 appropriate notice and demand in accordance with Civil Code § 1782(a) & (d), Plaintiff will  
2 subsequently amend this Class Action Complaint to also include a request for damages.  
3 Plaintiff and the Class request that this Court enter such orders or judgments as may be  
4 necessary to restore to any person in interest any money which may have been acquired by  
5 means of such unfair business practices, and for such other relief, including attorneys' fees  
6 and costs, as provided in Civil Code § 1780 and the Prayer for Relief.

7  
8 **FIFTH CAUSE OF ACTION**

9 **VIOLATION OF THE FALSE ADVERTISING LAW**

10 **(CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *et seq.*)**  
11 **(CALIFORNIA CLASS ONLY)**

12 133. Plaintiff hereby incorporates each preceding and succeeding paragraph as though  
13 fully set forth herein.

14 134. Business and Professions Code §§ 17500 *et seq.* prohibits any person, firm,  
15 corporation or association, or any employee thereof, with the intent to dispose of real or personal  
16 property, from performing services or inducing the public to enter into any obligation relating to  
17 property or services, disseminating an untrue or misleading statement concerning such property  
18 or services which the Defendants knew, or in the exercise of reasonable care should have known,  
19 was untrue or misleading. A Court may order injunctive relief and restitution to affected  
20 members as remedies for any violations of Business and Professions Code § 17500 as part of the  
21 Unfair Competition Law.

22 135. At all times herein, Defendants have engaged in disseminating false and  
23 misleading communications which misrepresent the characteristics, nature, quality and safety of  
24 the services and products being sold to Plaintiff and the Class. Defendants' business practices  
25 include, without limitation:

- 26 a. Selling to Plaintiff and the Class hotel room reservations at purportedly  
27 the "best price" when the prices were in fact set as a result of an illegal  
28 antitrust conspiracy;



- 1           b.       Failing to disclose to Plaintiff and the Class that the Website Retailer  
2                   Defendants and the Hotel Defendants had engaged in a conspiracy to  
3                   manipulate the price of hotel room reservations;
- 4           c.       Engaging in the misconduct as set forth in this complaint, including but  
5                   not limited to implementing and enforcing illegal and anticompetitive  
6                   agreements between and amongst the Website Retailer Defendants and the  
7                   Hotel Defendants;
- 8           d.       Violating the other statutes and common law causes of action as alleged in  
9                   this complaint.

10       136.   Defendants engaged in the advertising and the failure to disclose the conspiracy as  
11   herein alleged with the intent to induce Plaintiffs to purchase Defendants' products and services.

12       137.   Defendants caused to be made or disseminated throughout California and the  
13   United States, through advertising, marketing and other publications, statements that are untrue  
14   or misleading, and which were known, or which by the exercise of reasonable care should have  
15   been known to Defendants, to be untrue, misleading to consumers and Plaintiffs. Defendants'  
16   advertising was untrue or misleading and likely to deceive the public by concealing the nature  
17   and existence of the antitrust conspiracy entered into between and amongst the Website Retailer  
18   Defendants and the Hotel Defendants to manipulate the price of hotel room reservations.

19       138.   In purchasing hotel room reservations from Defendants, Plaintiff and the Class  
20   reasonably believed and/or depended on the material false and/or misleading information  
21   provided by Defendants. In other words, Defendants induced Plaintiff and the Class to purchase  
22   hotel room reservations using the Website Retailer Defendants and from the Hotel Defendants.

23       139.   In making and disseminating the statements herein alleged, Defendants knew, or  
24   by the exercise of reasonable care should have known, that the statements were and are untrue or  
25   misleading and so acted in violation of California Business and Professions Code §§ 17500, *et*  
26   *seq.* Moreover, Plaintiff and the Class were exposed to Defendants' advertising and its false and  
27   misleading statements and were affected by the advertising in that they believed it to be true  
28   and/or relied on it when making purchasing decisions.

WHEREFORE, Plaintiff prays:

2. That the unlawful conduct, contract, conspiracy or combination alleged herein be adjudged and decreed to be a restraint of trade or commerce in violation of Section 1 of the Sherman Act, as well as a violation;

4. That the unlawful conducted alleged herein be adjudged and decreed to be in violation of the California False Advertising Law;

5. That the unlawful conduct alleged herein be adjudged and decreed to be in violation of the Consumer Legal Remedies Act;

6. That the Plaintiff and the Class alleged herein recover damages, to the maximum extent as provided by law, including treble damages, based on injuries sustained and that a joint and several judgment in favor of Plaintiff and the Class be entered against the Defendants;

7. That Defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained

1 from in any manner continuing, maintaining, or renewing the conduct, contract, conspiracy or  
2 combination alleged herein, or from entering into any other conspiracy alleged herein, or from  
3 entering into any other contract, conspiracy or combination having a similar purpose or effect,  
4 and from adopting or following any practice, plan, program, or device having a similar purpose  
5 or effect;

6 8. That Plaintiff and members of the Class be awarded pre- and post-judgment  
7 interest as provided by law, and that such interest be awarded at the highest legal rate from and  
8 after the date of service of the initial complaint in this action;

9 9. That Plaintiff and members of the Class recover their costs of suit, including a  
10 reasonable attorney's fee, as provided by law; and

11 10. That Plaintiff and members of the Class have such other, further, and different  
12 relief as the case may require and the Court may deem just and proper under the circumstances.

13 Dated: October 9, 2012

Respectfully submitted,

14 

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial as to all issues triable by a jury.

Dated: October 9, 2012

Respectfully submitted,



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